

November 10, 1954

George F. Nelson, Esq.,
Assistant Attorney General

Attorney General

Mr. Winfield Phillips,
Bank Commissioner

Dear Mr. Phillips:

In reply to your letter of November 9 regarding what interest may be charged on conditional sales contracts, notes and open accounts which become past due, I advise as follows:

The subject of rates of interest is covered in Revised Laws, c. 367, s. 1, which provides,

"In rendering judgments, and in all business transactions where interest is paid or secured, it shall be computed and paid at the rate of six dollars on a hundred dollars for one year, unless a different rate is expressly stipulated in writing."

Prior to the enactment of c. 121 of the Laws of 1921, the statute read the same except that the word "lower" was in the law rather than the word "different", so that 6% was the limit, after which such charges were usurious. It will be noted that c. 121 of the Laws of 1921 excepted c. 228 of the Laws of 1917, which is our small loans statute of today (R.L. c. 319, which by s. 15 thereof permits interest at a rate not to exceed 2% per month).

R.L. c. 396, s. 1, and R.L. c. 399, s. 10, provide for interest on judgments and executions in civil actions and they adopt the 6% legal rate. One other exception comes to my mind: R.L. c. 315, s. 16, as amended by Laws of 1951, c. 22, s. 1, permits credit unions to loan to their members and charge them not in excess of 1% per month.

Accordingly, while it is true that there is no specific statutory designation of the rate above which interest becomes usurious when expressly stipulated in writing by the parties, it does appear that interest in excess of 2% per month -- the maximum allowed on small loans -- would be regarded as unconscionable, and business practice and custom has generally adopted the 6% rate, exceeding it, however, in cases where the entire interest sum is charged

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- 2 -

on an obligation even though the obligation may be substantially paid back in installments during the time for which interest has been charged. In the absence of a designation of interest in a contract, note or open account which becomes past due, no interest would run before the formal demand for payment of the same and it would still be discretionary with the court whether to permit interest at 6% to run from the date of the writ in an action brought to recover the sum, or to permit interest only from date of verdict or judgment.

Very truly yours,

George F. Nelson
Assistant Attorney General

GFN:HP